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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,668	08/31/2001	Mehran Bashiri	S63.2-9867	3795

490 7590 12/18/2003

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/18/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,668

Applicant(s)

BASHIRI, MEHRAN

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 Jan 2002, 09 Dec 2002 24 Oct 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 5, 16-29, 31, 32 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15, 30, 33-42, 44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Claims 5, 16-29, 31, 32 and 43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-13, 35-37, 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation “radially and/or axially” is indefinite. It is unclear whether the pressure is applied radially or axially.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 1, 7, 9, 10 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1034751 to Mitsudou et al.

Mitsudou discloses a stent comprising a non-woven tubular element having a plurality of openings (FIG. 1), the tubular element comprising a plurality of interconnected members and at least one frangible restraining member (4) adapted to break upon the application of a radial pressure (Column 4 lines 25-38).

6. Claims 30, 33, 34 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,258,117 to Camrud et al.

Camrud discloses a stent comprising a frangible restraining member disposed about at least a portion of the stent, the restraining member at least partially constructed from metal, plastic or a combination thereof (Column 7 lines 21-32).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4, 6-10, 14, 15, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camrud et al. '117 in view of U.S. Patent No. 5,234,456 to Silvestrini.

Camrud discloses the claimed invention except for the stent comprising a non-woven tubular element having a plurality of openings. Silvestrini teaches that a plurality of openings are provided in the body of a stent to promote tissue ingrowth (Column 2 lines 27-31). It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to provide the device of Camrud with the openings of Silvestrini in order to promote tissue ingrowth.

9. Claims 11, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camrud et al. '117 in view of Silvestrini '456 as applied to claims 1-4, 6-10, 14, 15, 41 and 42 above, and further in view of U.S. Patent No. 5,591,223 to Lock et al.

Camrud, as modified, discloses the claimed invention except for the pressures that the frangible members can withstand before breaking. Lock teaches that frangible members can withstand up to 10 atms before breaking and allowing a stent to expand (Column 5 lines 8-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Camrud, as modified, with the specific application pressures of Lock in order to restrain the device until it is placed in the body to expand.

10. Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camrud et al. '117 in view of Lock et al. '223.

Camrud discloses the claimed invention except for the pressures that the frangible members can withstand before breaking. Lock teaches that frangible members can withstand up to 10 atms before breaking and allowing a stent to expand (Column 5 lines 8-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Camrud with the specific application pressures of Lock in order to restrain the device until it is placed in the body to expand.

11. Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsodou in view of Lock et al. '223.

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Mitsodou discloses the claimed invention except for the pressures that the frangible members can withstand before breaking. Lock teaches that frangible members can withstand up to 10 atms before breaking and allowing a stent to expand (Column 5 lines 8-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Mitsodou with the specific application pressures of Lock in order to restrain the device until it is placed in the body to expand.

12. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsodou in view of Camrud et al. '117.

Mitsodou discloses the claimed invention except for the stent being self-expanding. Camrud teaches that both expandable and self-expandable stents may be used in combination with a frangible restraining member. Camrud teaches that it is known in the art to deliver a self-expanding stent restrained by a frangible restraining member by a balloon catheter arranged to break the frangible restraining member and thereafter allowing the stent to self-expand (Column 7 lines 20-32). The balloon catheter assisting the expansion of the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Mitsodou with the self-expanding capabilities as taught by Camrud since expandable and self-expanding stents are seen as alternate embodiments known in the art.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,441,515 to Khosravi et al.

U.S. Patent No. 6,520,984 to Garrison et al.

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U.S. Patent No. 6,572,647 to Supper et al.

PG-PUB 2002/0177890 to Lenker


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Jessica R Baxter
Examiner
Art Unit 3731

jrb
jrb


MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
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